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Labor Arbitration—Coverage of a Unilateral Noncontributory Pension Plan.— Saks and Company, Inc, v. Saks Fifth Avenue Women's Shoe Salespeople Committee.

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account agreement. However, other jurisdictions are in accord with the conclusion of the instant case.[9]

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Labor Arbitration— Coverage of a Unilateral Noncontributory Pension Plan.—***Saks and Company, Inc. v. Saks Fifth Avenue Women's Shoe Salespeople Committee.***[1]—An employer entered into a collective bargaining agreement with a Union which provided for general arbitration,[2] severance pay, and also, the extension of an existing pension plan to these employees covered by the contract.[3] Later, on the advice of the pension committee the employer refused to extend the plan to a retiring employee who requested severance pay, the refusal being on the theory that the employee must elect either severance pay or retirement benefits.[4] The union requested arbitration. The employer contended that the issue was not arbitrable as the pension plan was not made so by the collective bargaining agreement. In a proceeding to compel arbitration before the Supreme Court, New York County, the employer's motion to stay arbitration was granted. On appeal, the Appellate Division, (1st Dep't) in denying the employee's motion, and thereby reversing the lower court, held in a three-to-two decision that although the administration and interpretation of the pension plan was not a proper subject matter for arbitration, there was an arbitrable question as to whether the pension plan with the interpretation of the pension committee, satisfied the obligations assumed by the employer under the collective bargaining contract.

In reaching this result the court relied heavily on a case involving an employer's right to subcontract.[5] There the court held that although a dispute over such a right constituted no arbitrable issue under a broad arbitration clause, there was an arbitrable question as to whether the subcontract was bona fide or a mere subterfuge to avoid the obligations of the collective bargaining agreement.

Much dissatisfaction with the rulings of the State courts in the labor arbitration field[6] can be traced to their adherence to the *Cutler Hammer*

[9] Mitts v. Williams, 319 Mich. 417, 29 N.W.2d 841 (1947); In Re Hickmotts Estate, 256 App. Div. 1047, 10 N.Y.S.2d 918 (4th Dep't 1939).

[1] 192 N.Y.S.2d 1002 (App. Div. 1st Dep't 1959).

[2] "Any claim, dispute, grievance or difference arising out of, or relating to this agreement . . . shall be submitted to arbitration."

[3] "Any pension plan, additional vacation or holiday granted to the salespeople in the New York Store generally shall also be extended automatically to employees covered by this contract. When available, the details of the Pension Plan now in effect and subject to ratification by the stockholders shall be communicated to the shoe salespeople of Departments 23 and 723."

[4] The pension committee construed a clause in the plan which, for eligibility, an employee, ". . . shall not be a participant or be eligible for participation in any plan providing retirement or similar benefits . . . ."

[5] Matter of Otis Elevator Co. (Carney) 6 N.Y.2d 360, 189 N.Y.S.2d 874 (1959).

[6] See Kharas and Koretz, Judicial Determination of the Arbitrable Issue in Labor Arbitration, 7 Syracuse L. Rev. 193 (1956), Summers, Judicial Review of Labor Arbitration or Alice Through a Looking Glass, 2 Buffalo L. Rev. 1 (1952).

doctrine,[7] which requires that for enforcement of an agreement to arbitrate the court must not only be satisfied that the dispute is covered by the agreement but also that the claimed subject of arbitration is bona fide and reasonable. The dissent, in the instant case, discussing both the construction of the pension plan and whether the dispute was bona fide under such a construction applied the requisites set out by *Cutler Hammer*. In recent years the *Cutler Hammer* doctine has not been strictly followed and a group of cases have either distinguished the doctrine or failed to apply its reasoning.[8] The instant case, by failing to mention the bona fides of the claim, still further departs from the *Cutler Hammer* doctrine.

The court seems to reach a reasonable and just result in the face of contrary prevailing opinion. It is encouraging to note that the common sense concepts behind collective bargaining are becoming more controlling in labor arbitration litigation than the rigid formalism applied in the general area of contract law. It is submitted that an adherence to the *Cutler Hammer* doctrine would slow down arbitration processes by refusing to allow the arbitrator to proceed immediately with settlement of the dispute, and thereby defeat the basic purpose of arbitration.

PAUL D. SCANLON

Labor Law—Railway Labor Act as Amended[1]—Statutory Construction —The Extra-Territorial Effect Thereof.—*Air Lines Stewardesses, Etc., Ass'n v. Northwest Airlines, Inc.*[2]—The Air Line Stewardesses Association International is the certified bargaining agent for employees of Northwest Airlines hired or performing their duties within the United States and its territories.[3] In a proceeding by the union to impeach[4] an arbitration

[7] International Association of Machinists v. Cutler Hammer Inc., 271 App. Div. 917, 67 N.Y.S.2d 317 (1st Dep't 1947), aff'd without opinion, 297 N.Y. 519, 74 N.E.2d 464 (1947); Botany Mills Inc. v. Textile Workers Union, 44 N.J. 504, 130 A.2d 900 (1957).

[8] Matter of Bohlinger and National Cash Register Company, 305 N.Y. 539, 114 N.E.2d 31 (1953); Matter of Teschner, 309 N.Y. 972, 132 N.E.2d 333 (1956); Matter of Potoker, 2 N.Y.2d 533, 141 N.E.2d 841 (1957).

[1] 49 Stat. 1189 (1936); 45 U.S.C. § 181 (1958) as amended to include common carriers by air engaged in interstate or foreign commerce.

[2] 267 F.2d 170 (8th Cir. 1959). cert. den. 36. U.S. 901 (1959).

[3] The Association was certified by the National Mediation Board under the Railway Labor Act, 44 Stat. 577 (1926); as amended 64 Stat. 1238 (1951); 45 U.S.C. §152 (1958).

[4] It is the Association's position that it be recognized as the collective bargaining agent of all employees hired by Northwest irrespective of the geographic location of operations or nationality of the employees, and that the Railway Labor Act as amended to include common carriers by air, confers upon the Association that right. The following is the pertinent language of the amendment:

> "All of the provisions of section 151, 152, and 154-163 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce . . . and every air pilot or other person who performs any work as an employee . . . of such carrier . . ." 49 Stat. 1189 (1936); 45 U.S.C. § 181 (1958).